IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4785 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAGJIBHAI DEVRAJ VALAND

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4785 of 1994

MR JITENDRA M PATEL for Petitioner No. 1-3

GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 12/04/2004

ORAL JUDGEMENT

The petitioners are members of backward class community residing at village Adbalka, Dist. Rajkot.

The then Deputy Collector passed an order on 19.4.1968 granting land admeasuring 4 acre 12 gunthas bearing Survey No. 9. The petitioner No.1 and his family members, made the said land cultivable and and fertile and were cultivating the same since then and on the date of filing of the petition, the petitioners were in possession of the said land.

2.1 The petitioner No.1 partitioned the land in 1985 in favour of his two sons and the entry was also certified by the revenue authority. It is the case of the petitioner that he was paying land revenue and other taxes to the Government which were accepted by the authority all throughout. According to the petitioners, some portion of the land was acquired by the State Government for the purpose of canal in the year 1986 and compensation was also paid to the petitioners which clearly establishes that the petitioners were all throughout in possession of the land and that fact was accepted by the authorities.

2.2 It is the case of the petitioners that on a misrepresentation behind the back of the petitioners, the Mamlatdar alleged to have passed an order in the year 1980 to the effect that the petitioner No.1 had given statement before the Deputy Collector that he is prepared to leave possession of the land and on that alleged statement, the Mamlatdar passed an order on 6th December 1980 accepting the resignation of the petitioner No.1. The petitioners were never served with the said order, which is produced at Annexure.A to the petition.

2.3 According to the petitioners, somewhere in the second week of July 1990, the Revenue Circle Inspector visited the petitioners' land and informed the petitioners that because of certain breach of conditions, the resignation was accepted and the Government is entitled to recover possession.

2.4 The petitioner No.1 immediately made a representation to the Mamlatdar on 21st July 1990 wherein he has specifically stated that even after 1980, the entry is confirmed on 1st October 1985. Since there was no reply from the Mamlatdar, the petitioners preferred an appeal being Misc. Appeal No. 33 of 1990 before the Deputy Collector, which came to be dismissed by order dated 18th December 1990 mainly on the ground of delay.

2.5 Against the above order, the petitioners preferred appeal before the Collector, Rajkot being Land Appeal No. 38 of 1991 which was also dismissed by

judgment and order dated 18th April 1992.

2.6 Against the above order of the Collector, the petitioners preferred Revision Application No. SRD-JMN-Raj/7/92 which was also dismissed by judgment and order dated 8th November 1993. Against the said order, the petitioner has approached this Court by way of this petition.

3. This Court while issuing notice, has protected the possession of the petitioner and while admitting the matter, on 13th Sept. 1994, confirmed the ad-interim relief.

4. Learned Advocate Mr.Patel for the petitioners has contended that the petitioners have never resigned in the year 1980 as alleged and on the contrary, in the year 1985, the entries were confirmed for partition which clearly establishes that the proceedings of 1980 are concocted and are not genuine. Mr.Patel also contended that even in the year 1986, when the land was acquired for public purpose, the petitioners were paid compensation which establishes that the Government itself has found the petitioners to be in possession of the land. Therefore, the action of the State Government or the Mamlatdar directing the petitioners to hand over possession of the land orally in the year 1990 is without due process of law and the respondents are required to be restrained from disturbing the possession of the petitioners.

5. Learned AGP Mr.Jani for the respondents contended that the resignation was given by the petitioners and the order was passed on 6th December 1980 and therefore, the order passed by the authority is just and proper and this Court, under Article 226 of the Constitution, has very limited jurisdiction and hence may not interfere with the said proceedings.

6. I have heard learned Advocate Mr.Patel for the petitioners and learned AGP Mr.Jani for the respondents. Prima facie, the order dated 6th December 1980 is passed in clear violation of the principles of natural justice inasmuch as the alleged resignation tendered by the petitioner No.1 is not established inasmuch as it was a recorded statement which was not signed by the petitioner No.1. Apart from that, if the order would have been passed against the petitioners, the authority would have taken possession immediately on the ground that the petitioners have committed breach of certain conditions. The possession is not taken for a considerable time.

Further, in the year 1985, granting compensation to the petitioners clearly establishes that the order of 1980 is never passed or never communicated to the petitioners or any such entry is made in the record, otherwise, the competent authority would have never allowed partitioning of the land granted to the petitioners. The petitioner No.1 has also filed affidavit dated 20th June 1992 wherein he has reiterated that he is in possession of the land and the same has not been taken by the competent authority pursuant to the order dated 6th December 1980. Prima facie, the order at Annexure.A is not communicated to the petitioners in view of the fact that the same was never passed and within the knowledge of the petitioners and thus the case of the petitioners is required to be accepted, more particularly when the authority has allowed the petitioners to partition in the year 1985 and paid compensation in the year 1986 which clearly supports the case of the petitioners.

7. In the result, the petition deserves to be allowed and it is allowed. The orders passed by the authorities below are quashed and set aside and the respondents are restrained from taking possession of the land of the petitioners on the basis of the order dated 6th December 1980. Rule is made absolute accordingly. No order as to costs.

(K.S. Jhaveri, J.)

Sreeram.